

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 24, 2006

The Council of the City of San José convened in Regular Session at 9:34 a.m. in the Mayor's Conference Room, T1841, at City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager.

Absent: Council Members: Gonzales (Excused).

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:35 a.m. in Room T1841 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider cases of Great Oaks Water Co. v. City of San José, Redevelopment Agency, Southbay Water Recycling, et. al., (B) to confer with Legal Counsel regarding anticipated litigation (a) of two matters where there is significant exposure to litigation pursuant to subsection (c); (C) to confer with real property designated representatives pursuant to Government Code Section 54956.8: Properties: (1) Property – 1060 E. Empire Gardens (Assessor Parcel #249-64-01); Designated Representatives: Dave Sykes and Neil Stone for the City of San José and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment; (2) Property: Blue Jay Drive (Assessor Parcel #455-13-039), Designated Representatives: Dave Sykes and Neil Stone for the City of San José and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment; (3) Property: Roosevelt Park (Assessor Parcel #467-12-013), Designated Representatives: Dave Sykes and Neil Stone for the City of San José and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment; (4) Property: 491 E. Empire Street (Assessor Parcel #249-34-001), Designated Representatives: Dave Sykes and Neil Stone for the City of San José and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment; (5) Property: 20th Street N. of Santa Clara Street (Assessor Parcel #(part of 20th Street), Designated Representatives: Dave Sykes and Neil Stone for the City of San José and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment; (6) Property: 1500 Bulldog Boulevard (Assessor Parcel #467-11-041), Designated Representatives: Dave Sykes and Neil Stone for the City of San José and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment; (7) Property: S. of Hollow Lake Way at terminus of QuailCrest Way (Assessor Parcel #583-08-027), Designated Representatives: Dave Sykes and Neil Stone for the City of San José

CLOSED SESSION AGENDA (Cont'd)

and Sonya Schurr, Ty Williams, and Marilyn Cleveland; Under negotiation: Price and terms of payment.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:45 a.m. and reconvened at 1:35 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager.

Absent: Council Members: Gonzales (Excused).

INVOCATION (DISTRICT 1)

Pastor Steve Steele from Immanuel Presbyterian delivered a prayer.

PLEDGE OF ALLEGIANCE

Vice Mayor Chavez led the Pledge of Allegiance.

ORDERS OF THE DAY

Action: Upon motion by Council Member Campos, seconded by Council Member Yeager, and unanimously carried, the Orders of the Day and the Amended Agenda were approved. (10-0-1). Absent: Gonzales.

CEREMONIAL ITEMS

- 1.1 Presentation of a check for \$150,000 from PG&E to the City for the energy efficiency measures installed in the New City Hall. (Environmental Services/Public Works) (Deferred from 12/13/05 – Item 1.1 and 1/10/06 – Item 1.1)**

Action: Vice Mayor Chavez accepted a check to the City's Design Team presented by PG&E representatives Jerry Hutchinson and Joan Kromascini for the energy efficiency measures installed in the New City Hall.

- 1.2 Presentation of a commendation to the East Hill Youth Football Junior Pee Wees and the East Hill Youth Football Pee Wees for winning the San José PAL Football Championship in 2005. (Cortese) (Deferred from 1/10/06 – Item 1.4)**

Action: This item was deferred to February 7, 2006.

1.3 Presentation of the Bond Buyer Deal of the Year Award recognizing the Affordable Housing Finance Program in San José. (City Manager's Office/Redevelopment Agency)

Action: Vice Mayor Chavez presented the Bond Buyer Deal of the Year Award to Redevelopment Agency Board Executive Director Harry S. Mavrogenes and Assistant City Manager Mark Linder in recognition of San José's Affordable Housing Finance Program.

CONSENT CALENDAR

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and unanimously carried, the Consent Calendar was approved and the below listed actions taken as indicated, in addition, Item 2.8 was pulled by Council Member LeZotte and Item 2.10 was pulled by Council Member Reed for discussion. (10-0-1). Absent: Gonzales.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 27642 – Rezones certain real property situated at the southwest corner of Alum Rock Avenue and Scharff Avenue (2230 Alum Rock Avenue) to CP Commercial Pedestrian Zoning District. C05-103**

Documents Filed: Proof of publication of title of Ordinance No. 27642, executed January 17, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27642](#) was adopted. (10-0-1). Absent: Gonzales.

- (b) **ORD. NO. 27643 – Rezones certain real property situated at the west side of South Cypress Avenue, approximately 400 feet south of Stevens Creek Boulevard (341 South Cypress Avenue), to A(PD) Planned Development Zoning District. PDC05-081**

Documents Filed: Proof of publication of title of Ordinance No. 27643, executed January 17, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27643](#) was adopted. (10-0-1). Absent: Gonzales.

- (c) **ORD. NO. 27644 – Establishing the Hotel Business Improvement District pursuant to the Parking and Business Improvement Area law of 1989 and levying an assessment therein for promoting the area.**

Documents Filed: Proof of publication of title of Ordinance No. 27644, executed January 17, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27644](#) was adopted. (10-0-1). Absent: Gonzales.

2.3 Acceptance of the Office of the City Auditor's report, *Sales Tax Audit Results for the Quarter Ended September 30, 2005*. (City Auditor)

Documents Filed: Hardcopy of report on the Sales Tax Audit Results for the Quarter Ended September 30, 2005, dated December 21, 2005, from City Auditor Gerald Silva.

Action: The report was accepted. (10-0-1). Absent: Gonzales.

2.4 Acceptance of the finding reports from Kafoury, Armstrong & Company, LLP for the quarter ending September 30, 2005, relating to the Bay 101 Conditional Approval of Stock Transfer. (City Auditor)

Documents Filed: Memorandum from City Auditor Silva, dated January 5, 2006, submitting finding reports from Kafoury, Armstrong & Company, LLP, related to the Bay 101 Conditional Approval of Stock Transfer.

Action: The report was accepted. (10-0-1). Absent: Gonzales.

2.5 Approval of fiscal actions for Redevelopment Agency Capital Projects

(a) Adoption of the following 2005-2006 Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):

- (1) Increase the appropriation to the Department of Public Works for the Hellyer-Piercy Improvement District project (PSM 428) in the amount of \$146,000.**
- (2) Increase the appropriation to the Department of Parks, Recreation, and Neighborhood Services for the Christmas in the Park project (PSM 425) in the amount of \$85,480.**

(b) Increase the estimate for Earned Revenue by \$231,480.

CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Budget Director Lisenbee, dated January 4, 2006, recommending approval of the appropriation ordinance and funding sources resolution.

Action: [Ordinance No. 27649](#), entitled "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund for the Hellyer-Piercy Improvement District Project and the Christmas in the Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and [Resolution No. 73045](#), "A Resolution of the City of San José Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund", were adopted. (10-0-1). Absent: Gonzales.

2.6 Approval of an ordinance amending Chapter 4.80 of Title 4 of the San José Municipal Code to add a new part to establish the Edward Byrne Memorial Justice Assistance Grant Trust Fund for the following purposes:

- (a) To collect and deposit all monies received by the City from the federal government related to the Edward Byrne Memorial Justice Assistance Grants; and**
- (b) To ensure the Edward Byrne Memorial Justice Assistance Grant expenditures are spent within grant guidelines.**

CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Budget Director Lisenbee, dated January 4, 2006, recommending approval of the ordinance.

Action: [Ordinance No. 27650](#), entitled "An Ordinance of the City of San José Amending Chapter 4.80 of Title 4 of the San José Municipal Code by Adding Part 52 to Establish the Edward Byrne Memorial Justice Assistance Grant Trust Fund", was passed for publication. (10-0-1). Absent: Gonzales.

2.7 Adoption of a resolution to:

- (a) Move the classification of Physician (1441) into the City's Senior Executive Performance Program (SEPP) and revise the salary range in a manner consistent with other classifications in the SEPP; and**
- (b) Delete the following job classifications:**
 - (1) Sanitary Engineer (5235)**
 - (2) Engineer I (3817)**
 - (3) Engineer II (3818)**
 - (4) Associate Engineer (3819)**
 - (5) Systems & Network Coordination Supervisor (1358)**
 - (6) Data Processing Control Clerk (1322)**
 - (7) Facility Crew Supervisor (3225)**

CEQA: Not a Project. (Employee Services)

Documents Filed: Memorandum from Human Resources Director Danaj, dated January 4, 2006, recommending adoption of the resolution.

Action: [Resolution No. 73046](#), entitled "A Resolution of the Council of the City of San José Approving Amendments to the City Pay Plan for Various Job Classifications", was adopted. (10-0-1). Absent: Gonzales.

2.8 Recommendation:

- (a) Approval of the 2005 Annual Report on the Sustainable Energy Policy and proposed 2006 Action Plan; and**
- (b) Direction to staff to report on the status of implementation and attainment of the Policy and Action Plan on an annual basis.**

CEQA: Not a Project. (Environmental Services)

2.8 (Cont'd)

Documents Filed: Memorandum from Environmental Services Director Stufflebean, dated January 4, 2006, recommending approval of the annual report with staff direction recommendations as contained therein.

This item was pulled by Council Member LeZotte for expression of approval and support.

Action: The report and direction to staff were approved. (10-0-0-1). Absent: Gonzales.

2.9 **Rejection of the only bid for the purchase of Brush Patrol Bodies for the General Services Department/Fleet Management Division and authorize the Director of Finance to re-solicit the Request for Bid. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Finance Director Johnson, dated January 11, 2006, recommending rejection of the bid and authorization for the Director of Finance to resubmit the request for bids on the project.

Action: The bid was rejected and the Director of Finance authorized to re-solicit the Request for Bid. (10-0-1). Absent: Gonzales.

2.10 **Report on bids and award the purchase of the Aerial Lift to the only bidder, ReachMaster, Inc. at a total cost of \$421,092.50 including tax, freight and 1 year warranty on parts and labor, including but not limited to, controls, controller, boards, wiring, motors and hydraulic equipment and a 3 year warranty on structural equipment, including, but not limited to jib arms, brackets connectors and welds. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Finance Director Johnson, dated January 4, 2006, recommending report on bids and recommending award of said purchase to the only bidder, ReachMaster, Inc., as stated and authorize the Director of Finance to execute the purchase order.

Public Comments: This item was putted by Ross Signorino, who questioned the reliability to the proposed equipment. George Fokos spoke in opposition to the contract due to the expense of equipment.

Staff responded to brief questions.

Action: Upon motion by Council Member Reed, seconded by Council Member Williams, and unanimously carried, report on bids and award of purchase were approved. (10-0-1). Absent: Gonzales.

- 2.11 (a) **Approval of an agreement with the South Bay Regional Public Safety Training Consortium to provide registration, instruction, and clerical support services for the San Jose Police Academy for the term of July 1, 2005 to June 30, 2006 in an amount not to exceed \$283,000, and;**
- (b) **Adoption of a resolution authorizing the City Manager to exercise up to four one-year renewal options, without further Council action other than the appropriation of funds. CEQA: Not a project. (Police)**

Documents Filed: Memorandum from Chief of Police Davis, dated January 4, 2006, recommending City Council approve the South Bay Regional Public Safety Training Consortium agreement and adopt the resolution of authorization for the City Manager to execute the specified options.

Public Comments: Ross Signorino pulled this item to suggest that Police Academy Training include classes on sensitivity training.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos, and unanimously carried, the agreement was approved and Resolution No. 73047, entitled “A Resolution of the City of San José Authorizing the City Manager to Exercise up to Four One-Year Renewal Options with the South Bay Regional Public Safety Training Consortium to Provide Registration, Instruction and Clerical Support Services for the San José Police Academy”, was adopted. (10-0-1). Absent: Gonzales.

- 2.12 **Adoption of a resolution authorizing the City Manager to execute an agreement with the Commission on Peace Officer Standards and Training (P.O.S.T.) related to components of the previously approved P.O.S.T.-reimbursed training program for peace officers in Santa Clara County for the term of July 1, 2005 to June 30, 2006 in an amount not to exceed \$158,000. CEQA: Not a project. (Police)**

Documents Filed: Memorandum from Chief of Police Davis, dated January 4, 2006, recommending City Council adopt the resolution.

Public Comments: Ross Signorino spoke in support of the resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos, and unanimously carried, [Resolution No. 73048](#), entitled “A Resolution of the City of San José Authorizing the City Manager to Execute an Agreement with the Commission on Peace Officer Standards and Training (P.O.S.T.) Related to Law Enforcement Driver Simulator Training and Force Option Simulator Training”, was adopted. (10-0-1). Absent: Gonzales.

- 2.13 Approval of an ordinance amending Chapter 11.48 of Title 11 of the San José Municipal Code to:**
- (a) Expand the Cahill Park Residential Permit Parking Area (RPP) to include four (4) street segments;**
 - (b) Expand the Horace Mann RPP to include sixteen (16) street segments;**
 - (c) Expand the South University RPP to include eighteen (18) street segments;**
 - (d) Establish a new RPP area for the Sherman Oaks Neighborhood.**
- Council Districts: 3 and 6. CEQA: Exempt: PP05-195. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Helmer, dated January 5, 2006, recommending approval of the ordinance.

Action: [Ordinance No. 27651](#), entitled “An Ordinance of the City of San José Amending Chapter 11.48 of Title 11 of the San José Municipal Code to Permanently Add a Total of Sixteen (16) Additional Block Segments to the Horace Mann Permit Parking Area; to Permanently Add a total of Eighteen (18) Additional Block Segments to the South University Permit Parking Area; to Permanently Add a Total of Four (4) Additional Block Segments to the Cahill Park Permit Parking Area; and to Add a Sherman Oaks Permit Parking Program”, was passed for publication (10-0-1). Absent: Gonzales.

- 2.14 Approval of Mayor Gonzales’ travel to Washington D.C. for the U.S. Conference of Mayor’s 74th Winter Meeting, January 23 through January 27, 2006. Funding: Mayor’s Office. (Mayor)**
(Rules Committee referral 1/18/06)

Documents Filed: Memorandum from Mayor Gonzales, dated January 18, 2006, requesting said travel approval.

Action: Mayor Gonzales’ travel to Washington, D.C. was approved. (10-0-1). Absent: Gonzales.

- 2.15 Adoption of a resolution authorizing the City Manager to negotiate and execute a Maintenance Agreement between the City of San José and the State of California related to the construction and use of the Highway 280 Under-Crossing as part of the Los Gatos Creek Trail Reach 4 Project. Council District: 6. CEQA: PP04-01-014, Negative Declaration, June 26, 2004. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Hensley, dated January 18, 2006 recommending adoption of the resolution.

Action: [Resolution No. 73049](#), entitled “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Maintenance Agreement with the State of California Relating to the Highway 280 Undercrossing as Part of the Los Gatos Creek Trail Reach 4 Project” was adopted. (10-0-1). Absent: Gonzales.

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – January 11, 2006 Vice Mayor Chavez, Chair

Documents Filed: Rules Committee report of January 11, 2006.

(a) Redevelopment Agency items reported out at Redevelopment Agency meeting

(b) City Council

(1) Review January 24, 2006 Council Agenda
The Committee recommended approval of seven new items.

(2) Add New Items to January 17, 2006 Agenda
Meeting Cancelled

(c) Legislative Update

(1) State

Director of Intergovernmental Relations Shotwell advised the Committee that the proposed State Budget had been released and highlighted several key issues which may impact the City of San José. She indicated that she is preparing a written report for the Committee.

(2) Federal - There was no report.

(d) Meeting Schedules

(1) Coyote Valley Specific Plan – January 31, 2006

The Committee recommended scheduling a Study Session on the Coyote Valley Specific Plan for Tuesday, January 31, 2006, immediately following the City Council afternoon session.

(e) The Public Record. Attachment: Memorandum from City Clerk Price, dated January 5, 2006, transmitting items filed for the Public Records for the period of December 7, 2005 to January 4, 2006.

The Committee noted and filed the Public Record.

(f) Appointments to Boards, Commissions and Committees

The Committee recommended the following appointments and approved the conduct of a blind drawing for those commissions with more than one vacancy and varying terms ending dates, with the results of the draw noted in the Rules Committee report.

3.2 Report of the Rules Committee – January 11, 2006 (Cont'd)
Vice Mayor Chavez, Chair

(f) Appointments to Boards, Commissions and Committees (Cont'd)

Disability Advisory Commission

Appoint 1 commissioner. Attachment: Memorandum from Council Member LeZotte, dated January 6, 2006, recommending appointment to the Disability Advisory Commission.

The Committee recommended appointment of Deborah Ann Danielwicz to an unexpired term ending June 30, 2006 with a subsequent 3-year term ending June 30, 2008.

Housing Advisory Commission

Appoint 1 commissioner. Attachment: Memorandum from Council Member Cortese, dated December 12, 2005, recommending appointment to the Housing Advisory Commission.

The Committee recommended appointment of David Scott Roberson to a term ending December 31, 2008.

Human Rights Commission

Appoint 4 commissioners. Attachment: Memorandum from Council Member Linda LeZotte, dated December 21, 2005, recommending appointment to the Human Rights Commission.

The Committee recommended appointment of Paul Feci, Singh Gill Kalwart and Jessica Rossman to terms ending December 31, 2006; and Karen Elaine Davis to an unexpired term ending December 31, 2006..

Small Business Development Commission

Appoint 2 commissioners. Attachment: Memorandum from Council Member Chuck Reed, dated December 20, 2005, recommending appointment to the Small Business Development Commission.

The Committee recommended appointment of Brian Rossman and Helen Wang to terms ending December 31, 2008.

3.2 Report of the Rules Committee – January 11, 2006 (Cont'd)
Vice Mayor Chavez, Chair

(g) Rules Committee Reviews, Recommendations and Approvals

(1) Approve Council Committee Work Plans

- (a) Building Better Transportation. Attachment: Memorandum from Mayor Gonzales and Rules Committee Chair Campos, dated January 18, 2006, recommending approval of the Building Better Transportation Committee workplan.

The Committee recommended approval of the Building Better Transportation Committee work plan for the period January through June 2006 and setting its meeting schedule on the first Monday of each month at 1:30 p.m. in City Hall Committee Room W118/119.

- (b) Building Strong Neighborhoods. Attachment: Memorandum from Mayor Ron Gonzales and Rules Committee Chair Chirco, dated January 11, 2006, recommending approval of the Building Strong Neighborhoods Committee workplan.

The Committee recommended approval of the Building Strong Neighborhoods Committee workplan for period January through June 2006 and setting its meeting schedule on the third Monday of each month at 1:30 p.m. in City Hall Committee Room W119.

- (2) Approval of travel by Council Member LeZotte to Sacramento, California, January 12, 2006, to attend the League of California Cities - Transportation, Communications, and Public Works Policy Committee Meeting. Attachment: (1) Memorandum from Council Member LeZotte dated January 5, 2005, dated January 5, 2006, regarding travel authorization. (2) Memorandum from City Clerk Price, dated January 9, 2006, regarding requested and approved travel requests.

The Committee recommended approval to travel and use of the Mayor and Council Travel Fund.

(h) Open Forum

Bill Chew spoke about his candidacy for City Council District 3 and the opportunity for all candidates to utilize the open forums at public meetings to get their message to the residents of San José.

- (i) Adjournment - The meeting adjourned at 2:15 p.m.

Action: Upon motion by Council Member Chirco, seconded by Council Member Campos, and unanimously carried, the Rules Committee Report and actions of January 11, 2006 were accepted. (10-0-1). Absent: Gonzales.

3.4 Presentation of information regarding franchise requirements for SBC's permit request to install facilities to support internet protocol television (IPTV) services (Project Lightspeed). (Public Works/Information Technology/City Manager's Office) (Deferred from 12/13/05 – Item 3.12 and 1/10/06 – Item 3.4)

Documents Filed: Memorandum from Director of Public Works Allen, Director of Information Technology Bjurman, and Deputy City Manager Shikada, dated December 7, 2005, regarding franchise requirements for SBC's permit request.

Deputy City Manager Ed Shikada provided the presentation and responded to numerous questions from the Council.

Public Comments:

Speaking in support of the permit request:

Burt Johnson, Louie Rocha, (President, Communication Workers of America), Leon Beachman, (SBC), and Seth Fearey, (Joint Venture, Silicon Valley Network).

Speaking in opposition:

William Garbett and Mark Trout.

Extensive discussion ensued.

Action: The presentation was unanimously received with direction to Staff to return within 30 days and provide an update on State and Federal legislative matters relating to franchise requirements; a definition of "level playing field"; a framework for the new technology; background information previously provided to the Council, including design issues and neighborhood impacts relating to service cabinets/boxes and negotiations with PacBell and others, and a review of the key policy issues. In addition, staff was directed to continue with ongoing negotiations with SBC and further, to keep the Council abreast with related issues in other jurisdictions.

3.5 Approval of an ordinance amending Chapter 3.44 of Title 3 of the San Jose Municipal Code by adding Section 3.44.160 to provide a flat 3% Cost-of-Living Adjustment effective April 1, 2006, for persons retired from the Federated City Employees Retirement System and for survivors of members or retirees. CEQA: Not a Project. (City Manager's Office)

Public Comment: Deborah Powell, City Labor Alliance, spoke in support of the proposed ordinance.

Documents Filed: Memorandum from Director of Employee Relations Gurza, recommending approval of the ordinance.

3.5 (Cont'd)

Action: Upon motion by Council Member Cortese, seconded by Council Member Williams, and unanimously carried, [Ordinance No. 27652](#), entitled "An Ordinance of the City of San José Amending Chapter 3.44 of Title 3 of the San José Municipal Code by Adding Section 3.44.160 to Provide a Flat 3% Cost-of-Living Adjustment Effective April 1, 2006, for Persons Retired from the Federated City Employees Retirement System and for Survivors of Members or Retirees, was passed for publication. (9-0-2). Absent: LeZotte, Gonzales.

TRANSPORTATION & AVIATION SERVICES

6.2 Discussion and review of Tow Services Agreements.

(a) Council Member Williams/Rules Committee referral:

- (1) Request staff review of the tow services agreements and clarify whether the annual review and adjustments are for the tow rates only or all rate charges by tow operators.
- (2) Request staff do a workload assessment for a mid-contract study of all fees related to tow services in similar jurisdictions to see if adjustments should be made above the CPI.

(Rules Committee Referral 12/14/05, Item G2)

(Williams)

(Deferred from 1/10/06 – Item 6.2)

(b) Staff response to referral:

- (1) Direct staff to proceed with implementing Section 3 of the adopted Fee Schedule for the Tow Services Agreement adopted by Council on December 3, 2002 by bringing forward CPI increases *for the Basic Tow Rate and the Contract Compensation Rate only* or;
- (2) Direct staff to review the Fee Schedule for Tow Services Agreements and return to the City Council within 90 days with a report of possible adjustments to the tow rates.

(Planning)

(Deferred from 1/10/06 – Item 6.2)

Documents Filed: (1) Memorandum from Planning, Building and Code Enforcement Director Horwedel, dated January 18, 2006, recommending staff direction as contained therein. (2) Memorandum from City Clerk Price, dated December 15, 2005, forwarding Council Member Williams' memorandum to the Rules Committee recommending Council request staff to review the tow services agreements and perform a workload assessment for a mid-contract study, as described therein.

Discussion: Deputy Director of Planning, Building and Code Enforcement Michael Hannon, Code Enforcement Administrator Jaime Matthews, and City Attorney Rick Doyle responded to a variety of Council questions about contract terms.

6.2 (Cont'd)

Public Comments:

Ed McGovern, representing City Tow, Motor Body and Pacific Tow, explained that he was not suggesting that the contracts be re-opened but clarification is needed because there are discrepancies in the record. He argued that the current contracts did not contemplate all the costs, nor consider higher costs for fuel, Workers Compensation and health care insurance. He added that City requirements necessitate more personnel and pointed out that the City's tow rates are lower than other cities. All of these factors are affecting the tow operators financially, he said.

Speaking in support of the Staff recommendation:

Nick Alongi, Jim Alves and Ana Worthen (Delta Towing) and Kenny Carvalho (City Towing). Ross Signorino asked for clarification on the acronym "C.P.I."

Ed McGovern responded to Council questions. Some concerns were expressed that the record was unclear and it was suggested that Staff review the various documents, including the including the 2003 agreement, the resolutions and the minutes as well as all the issues before the Council takes further action.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos, and unanimously carried, Council requested copies of the contracts for tow services and the supporting background information, including the memos, minutes, and authorizing resolutions, with direction to the City Attorney to provide a legal analysis relating to issues of mutual mistake, legal jurisdiction and claims of loss and report back in confidential format, if necessary or appropriate. (10-0-1). Absent: Gonzales. Council took no action on the Staff's recommendations.

6.3 **Approval of a cooperative agreement with the Santa Clara Valley Transportation Authority for a project to upgrade the traffic handling capacity and operations of the freeway interchange at Interstate 880 and Stevens Creek Boulevard, for a City-funded amount not to exceed \$1,500,000. CEQA: Not a Project. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Helmer, dated January 5, 2006, recommending approval of the cooperative agreement.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed, and unanimously carried, the agreement was approved. (9-0-2). Absent: Chavez, Gonzales.

ENVIRONMENTAL & UTILITY SERVICES

7.1 **Approval of actions related to the Recycle Plus Request for Proposal.**

- (a) **Acceptance of the status report for the Recycle Plus Request for Proposal for Integrated Waste Management Services.**

(Continued next page)

7.1 (Cont'd)

- (b) **Approval of the process for the release of a Request for Proposal for Single-Family Curbside Garbage and Recycling Services in Districts A and C and Yard Trimmings and Street Sweeping Services in District C on February 8, 2006.**

CEQA: Mitigated Negative Declaration, PP92-05-98. (Environmental Services and Finance)

Documents Filed: (1) Memorandum from Finance Director Johnson and Director Environmental Services Director Stufflebean, dated January 17, 2006, recommending acceptance of the status report and approval of the process for the release of the Request for Proposal. (2) Correspondence from Norcal Waste Systems, Inc., dated January 24, 2006, addressing their rationale for declining an extension of their current contracts with the City of San José.

Discussion: Director of Environmental Services Stufflebean and Deputy Director of Finance/Purchasing Walter Rossman provided an overview of the Recycle Plus Request for Proposal process and responded to extensive questions from the City Council.

Public Comments:

Paul Rottenberg, David Duong, Victor Duong, and Kristina Duang of California Waste Systems (CWS) expressed concerns regarding the proposed RFP process and urged the Council to approve the release of separate proposals for garbage pick-up and recycling.

James Kim and Bryan Cong Do, Coalition of Vietnamese Americans, concurred and asked the Council to give proper consideration to small, local businesses.

William Garbett and Ross Signorino expressed concerns regarding the current waste hauler.

Lengthy Council discussion ensued.

Action: Upon motion by Council Member Reed, seconded by Council Member Nguyen, and unanimously carried, the report was accepted and approved as amended, with direction to staff to allow for separate bids for the collection of garbage, recycling and yard waste, consider increasing the number of dumpster days, Neighborhood Clean-up days and streetsweeping, and factor in the evaluation process costs for staff to oversee the contracts. (10-0-1). Absent: Gonzales.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 5:33 p.m. to consider Item 9.1 in a Joint Session.

9.1 Acceptance of follow-up information requested at the January 10, 2006 Council Meeting, related to the San José Grand Prix. (City Manager's Office/Redevelopment Agency) (Referred from 1/10/06 – Item 9.1)

Documents Filed: Memorandum from Deputy City Manager Shikada and Director of Office of Economic Development Krutko, dated January 19, 2006, recommending acceptance of the follow-up report.

Discussion: Assistant City Manager Linder and Deputy City Manager Ed Shikada provided an overview of the follow-up report, which covered Staff research on other Champ Car host cities and data relative to City and Agency expenses and revenues relating to the race, with an emphasis on the economic impact to the General Fund and the return on the City's investment. Don Listwin, Founder and Chairman of the Canary Foundation, spoke in support and urged swift approval to provide the letting of important contracts. Council questions followed.

Public Comments:

Speaking in support of the Grand Prix:

Dan Fenton (Team San José), Dale Jantzen (President of the San Jose Grand Prix), Bob Singleton (San José Grand Prix), Ross Signorino, Curtis Archibald, Richard Sutton (Owner of Peggy Sue's), Jennifer Hall (Executive Director of Children's Theatre), Katie Bazarro (Stages Unlimited), Larry Stone, Julie Frombach, Lynn Maier (General Manager of Centerplate), John Davis and Dan Jentile.

Speaking in opposition:

William Garbett argued that the City Council's previous action was inappropriate, and expressed concerns regarding excluding other events in favor of the Grand Prix.

Vice Mayor Chavez requested staff continue working with surrounding businesses and community organizations that would be affected by the changes on Park Avenue and to continue working with local businesses affected by the race, such as the Children's Theatre and local vendors like, Peggy Sue's Restaurant and Gordon Biersch.

Council Members Cortese and Reed reiterated previous concerns and voiced objections to the City's financial participation.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Campos, and unanimously carried, the report was accepted, with direction to staff to continue working with surrounding businesses and community organizations that would be affected by the changes on Park Avenue and to continue working with local businesses affected by the race, such as the Children's Theatre and local vendors like, Peggy Sue's Restaurant and Gordon Biersch. (8-2-1). Noes: Cortese, Reed. Absent: Gonzales.

The Redevelopment Agency Board portion of the meeting adjourned at 6:37 p.m.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

Tract	Location	Council District	Developer	Lots/Units	Type	Proposed Decision
9683	SW corner Lundy Avenue and McKay Drive	4	Toll Bros. Inc.	198 Units	SFA	Approve
9749	E/S Campbell Avenue, 1000 feet N/O Newhall Street	3	Robson Homes, Inc.	104 Units	SFD	Approve
9588	Northwest corner Huff Avenue and Magliocco Drive	6	JSM Enterprises	50 Units	MFA	Approve
9642	620 Curtner Avenue	6	Graystone Development	30 Units	SFA	Approve

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

Tract	Location	Council District	Developer	Lots/Units	Type
9466	Southeast corner Lucretia Avenue And Owsley Avenue	7	Dana Nga-Yen Do	15 Units	SFD
9743	N'y Springbrook Avenue and Canyon Ridge Drive	8	Red Horizon Investors II, LLC	4 Units	SFD
9776	S/S Neal Avenue 300' East of Winchester Boulevard	6	Neal 3030 LLC	7 Units	SFD

RECESS/RECONVENE

The City Council recessed at 6:37 p.m. and reconvened at 7:08 p.m. in an evening session. Council Chambers, City Hall.

Present: Council Members: Chavez, Chirco, Cortese, LeZotte, Pyle, Reed, Williams, Yeager.

Absent: Council Members: Campos, Gonzales. (Excused)

The City Clerk Price read the requests for continuances of applications and other actions as recommended. Upon motion by Vice Mayor Chavez, seconded by Council Member Campos, and unanimously carried, the below noted continuances were granted. (10-0-1)
Absent: Gonzales.

OPEN FORUM

- (1) Francisco Robles shared information about the “One Child, One Village” organization.
- (2) Bill Chew expressed concerns regarding emergency preparedness.
- (3) Ross Signorino reported he heard on the news that San José is the Second Cleanest City in the United States.
- (4) Robert Apgar provided personal observations.
- (5) Mark Trout expressed personal religious viewpoints.

1.4 Presentation of the Herman J. Levy Human Rights Commission Award to Roz Dean recognizing her efforts to save the San José Medical Center and continuous dedication as a community activist. (LeZotte)
HEARD IN THE EVENING

Action: Council Member LeZotte and Vice Mayor Chavez and members of the Human Rights Commission presented the Herman J. Levy Human Rights Commission Award to Roz Dean for her continued efforts to save the San José Medical Center and dedication as a community activist.

1.5 Presentation of a commendation to The Harker School for serving the community by teaching our youth the importance of altruism and encouraging students to participate in a wide variety of charitable activities that earned the school the title of “Outstanding Philanthropic Youth Group” at the 2005 Philanthropy Day event. (LeZotte)
HEARD IN THE EVENING

Action: Council Member LeZotte and Vice Mayor Chavez presented a commendation to The Harker School for their service to the community in teaching the importance of altruism to our youth and encouraging students to participate a wide variety of charitable activities that earned the school the title of “Outstanding Philanthropic Youth Group”.

1.6 Presentation of a commendation to the Silicon Valley Conference for Community and Justice and the winners of the Annual Martin Luther King, Jr. Student Art, Writing and Multimedia contests. (Campos)
HEARD IN THE EVENING

Action: Vice Mayor Chavez and Council Member Campos presented a commendation to the Silicon Valley Conference for Community and Justice and to the Annual Martin Luther King Jr. Student Art, Writing and Multimedia contests winners.

1.7 Presentation of a commendation to the Almaden Business Association for their continued dedication to the residents and community in District 10. (Pyle)
HEARD IN THE EVENING

1.7 (Cont'd)

Action: Vice Mayor Chavez and Council Member Pyle presented a commendation to the Almaden Business Association for continued dedication to the residents and community in District 10.

**1.8 Presentation of a commendation to Holy Spirit School on the occasion of Catholic Education Week. (Pyle)
HEARD IN THE EVENING**

Action: Council Member Pyle and Vice Mayor Chavez presented a commendation to the Holy Spirit School on the occasion of Catholic Education Week.

**1.9 Presentation recognizing the “District 9 Stars”. (Chirco)
(Rules Committee referral 1/18/06)
HEARD IN THE EVENING**

Action: Vice Mayor Chavez and Council Member Chirco presented a recognition to the “District 9 Stars”, Dr. Rhonda Barber, Lorie Mello, Lindsey Yamamoto, and Phillip Andersen.

**1.10 Presentation recognizing Mr. Evan Barth from The Harker School for teaching his students the importance of sustainability and environmental stewardship. (LeZotte)
(Rules Committee referral 1/18/06)
HEARD IN THE EVENING**

Action: Council Member LeZotte and Vice Mayor Chavez presented a recognition to Mr. Evan Barth from the Harker School for teaching his students the importance of sustainability and environmental stewardship.

**1.11 Presentation of a commendation to the Pop Warner Oak Grove Eagles Midget Division One Team for winning the 2005 Pop Warner Super Bowl. (Williams)
(Rules Committee referral 1/18/06)
HEARD IN THE EVENING**

Action: Vice Mayor Chavez and Council Member Williams presented a commendation to the Pop Warner Oak Grove Eagles Midget Division One Team for winning the Pop Warner Super Bowl.

PUBLIC HEARINGS

- 11.1 (a) Consideration of ordinances rezoning the real property located on the South side of Fleming Avenue, approximately 1,032 feet southeast of Alum Rock Avenue (139 and 145 Fleming Avenue) (San José The Lord's Baptist Church and Parmer Inderjit S. and Kathy L., Owners), as follows:**
- (1) PDC05-061– Planned Development Prezoning from Unincorporated County to the A (PD) Planned Development Zoning District to allow single-family detached residences on a 2.66 gross acres site.**
 - (2) C05-079 – Staff Initiated Prezoning from County to R-1-5 Residence Zoning District to allow single-family detached residential use on a 0.22 gross acres site.**
- Director of Planning, Building and Code Enforcement recommended approval. Planning Commission recommended deferral for 90 days (7-0-0). CEQA: Mitigated Negative Declaration.**
PDC05-061/C05-079 - District 5
(Continued from 12/13/05 – Item 11.1(a))

Documents Filed: None.

Action: This item was continued to April 18, 2006.

- 11.2 Consideration of an ordinance rezoning the real property located at/ on the southwesterly corner of State and Essex Streets (1391 State Street) (Martina Victor J., Owner) from the R-M Residential District to the A(PD) Planned Development Zoning District to allow the demolition of an existing single-family residence and the construction of three detached residential units on a 0.33 gross acre site. CEQA: Exempt.**
PDC05-002 – District 4
(Continued from 12/13/05 – Item 11.2)

Documents Filed: None.

Action: This item was continued to February 7, 2006.

- 11.3 Consideration of the following development proposals in connection with the real property located on the west side of Mahoney Drive, opposite Davenport Drive (471 Mahoney Drive), in the R-1-8 Residence Zoning District (Morgado Four Construction Inc., Owner). CEQA: Exempt.**
- (a) PDC05-116 - Consideration of an ordinance rezoning the real property from R-1-8 Residential Zoning District to the A(PD) Planned Development Zoning District to allow one existing and one new single-family detached residences on a 0.25 gross acre site.**

(Continued next page)

11.3 (Cont'd)

- (b) **PD05-086 – Adoption of a resolution approving a Planned Development Permit to allow one existing and one new single-family detached residence on a 0.25 gross acre site.**
- (c) **PT05-047 – Adoption of a resolution approving a Planned Development Tentative Map to allow subdivision of one lot into two for single-family detached residential uses on a 0.25 gross acre site.**

Director of Planning, Building and Code Enforcement recommended approval. Planning Commission recommended denial (6-1-0).

PDC05-116/PD05-086/PT05-047 - District 5

Documents Filed: None.

Action: This item was continued to February 7, 2006.

- 11.4 Consideration of an ordinance rezoning the real property located on the east side of Monterey Highway, approximately 600 feet southerly of Umbarger Road (2774 Monterey Road) (Manoutchehr & Jaleh Movassate, Owner; Trumark Companies, Developer), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 72 single-family attached residences on a 3.0 gross acre site. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-0-1). CEQA: Mitigated Negative Declaration, File No. PDC00-151.
PDC05-071 - District 7**

Documents Filed: (1) Memorandum from Secretary of Planning Commission Horwedel, dated January 12, 2006, recommending approval of the proposed rezoning. (2) Memorandum from Director of Planning, Building and Code Enforcement Haase, dated January 4, transmitting the Staff Report dated December 22, 2005, recommending approval of the proposed Planned Development Rezoning. (3) Notice of Public Hearing dated December 8, 2005, submitted by the City Clerk.

Action: Upon motion by Council Member Reed, seconded by Council Member LeZotte, and unanimously carried, [Ordinance No. 27653](#), entitled “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the East Side of Monterey Highway, Approximately 600 Feet Southerly of Umbarger Road (2774 Monterey Highway) to A(PD) Planned Development Zoning District”, was passed for publication. (8-0-3). Absent: Campos, Yeager, Gonzales.

RECESS/RECONVENE

The Council of the City of San José recessed at 8:04 p.m. to a Redevelopment Agency meeting, and reconvened the City Council meeting at 8:10 p.m.

PUBLIC SAFETY SERVICES

8.1 Approval of Megan's Law Task Force recommendations for improving system of monitoring registered offenders. (Chavez) (Deferred from 12/13/05 – Item 8.1) HEARD IN THE EVENING

Public Comments:

- (1) Robert Sandoval, President, West Evergreen Neighborhood Association, expressed concerns of the amount of sex offenders living within his neighborhood community and noted the importance of the Megan's Law Website.
- (2) John Ascencion, resident of Santa Barbara County, expressed concerns regarding the amount of sex offenders nearby his non-profit organization focused on children.
- (3) Ross Signorino expressed the importance of harsher laws for sex offenders and supported the three-strike laws.
- (4) Mark Trout expressed personal viewpoints.

Documents Filed: Memorandum from Mayor Gonzales, Vice Mayor Chavez, and Megan's Law Task Force, dated January 20, 2005, recommending the adoption of recommendations related to Megan's Law, developed by the San José Megan's Law Task Force, as specified therein.

Discussion: Council Member Cortese requested staff to ensure information and notification is shared with school board members, school principals and employees, and Council District Offices.

Vice Mayor Chavez requested Staff to continue to collaborate with National League of Cities and the League of California Cities.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams, and unanimously carried, Council approved a memorandum from Mayor Gonzales, Vice Mayor Chavez, and the Megan's Law Task Force, dated January 20, 2006, with recommendations to staff contained therein, as well as additional direction to ensure information and notification is shared with school board members, school principals and employees, and Council District Offices. Staff also requested to continue to collaborate with National League of Cities and the League of California Cities. (9-0-2). Absent: Campos, Gonzales.

ADJOURNMENT

The Council of the City of San José adjourned at 8:40 P.M.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, M.M.C, CITY CLERK
EW/1-24-06 Min.

Access the video, the agenda and related reports for this meeting by visiting the City's website at www.sanjoseca.gov/clerk/MeetingArchive.asp